1989

Nellie Alexandra Hansen v. Carlisle Stuart Fauver : Brief of the State of Utah, Department of Social Services, Acting as Amicus Curiae

Utah Court of Appeals

Harry H. Souvall; McRae and Deland; Attorneys for Respondent.
R. Paul Van Dam; Attorney General; By: Blaine R. Ferguson; Assistant Attorney General; Brian M. Barnard; Attorney for Appellant.

BRIEF

NO. 89-0249-CA

IN THE UTAH COURT OF APPEALS

[redacted]LIE ALEXANDRA HANSEN,	)	
	)	
Plaintiff/Appellant,	)	
	)	
vs.	)	Case No. 89-0249 CA
	)	
[redacted]RLISLE STUART FAUVER,	)	Priority No. 14(b)
	)	
Defendant/Respondent.	)	

BRIEF OF THE STATE OF UTAH, DEPARTMENT OF SOCIAL SERVICES, ACTING AS AMICUS CURIAE

ON APPEAL FROM AN ORDER OF DISMISSAL OF THE EIGHTH JUDICIAL DISTRICT COURT IN AND FOR UINTAH COUNTY, STATE OF UTAH, HON. DENNIS L. DRANEY, DISTRICT JUDGE, PRESIDING.

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IN THE UTAH COURT OF APPEALS

NELLIE ALEXANDRA HANSEN,	)	
	)	
Plaintiff/Appellant,	)	
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vs.	)	Case No. 89-0249 CA
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BRIEF OF THE STATE OF UTAH, DEPARTMENT OF SOCIAL SERVICES, ACTING AS AMICUS CURIAE

JURISDICTION; NATURE OF PROCEEDING

This is an appeal from a District Court order in a domestic relations case. This Court has jurisdiction over this case pursuant to Utah Code Ann. § 78-2a-3(2)(h) (Supp. 1989), as amended.

INTEREST OF THE AMICUS CURIAE

The Public Support of Children Act, in § 62A-11-302, Utah Code Annotated (Supp. 1988), sets forth the broad public policy that "children shall be maintained form the resources of responsible parents, thereby relieving or avoiding, at least in part, the burden often borne by the general citizenry through public assistance programs." If parents fail to support their children, the State of Utah, Department of Social Services (the "Department") is often called upon to provide moneys for the support of those children, at taxpayer expense.

Whenever a parent is legally relieved of his obligation to support his child, this takes away the right of the Department to

seek to cause him to contribute toward the support of that child. It causes the taxpayers to absorb a greater public assistance expense than they might otherwise have to bear. The Department recognizes that there are occasions when circumstances justify the extraordinary step of relieving a parent of his parental rights and obligations. The Department submits, however, that this should take place only in exceptional circumstances and only after legal requirements for the termination of parental rights and obligations have been strictly complied with.

The Department believes that if the order of the District Court were sustained on appeal, the door would open for parents to enter into private agreements to terminate parental rights and obligations, and to seek court approval thereof without making the child a party or otherwise watching out for the interests of the child. Such agreements are inherently suspect, and something as important as the termination of a parent's rights and obligations should not be able to accomplished in that manner. Such a result would not be in the best interests of the minor children living in the State of Utah and it would be adverse to the financial interests of the taxpayers as well.

For these reasons the Department is vitally interested in this appeal and is submitting this brief on behalf of the appellant.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. What is the legal effect of the stipulation and order which purport to terminate the parental rights and obligations of

the respondent (the "father") toward his daughter, the appellant (the "child")?

2. Does the child in this case have a cause of action against her father for support, notwithstanding the stipulation between her father and mother (to which she was not a party), and the order approving it?

3. Did the District Court have jurisdiction to terminate the rights and duties of the father toward his child?

4. Would it be consistent with the principles of equal protection of the laws if parents of illegitimate children were allowed to irrevocably terminate the obligations of the fathers toward their children?

CONSTITUTIONAL PROVISIONS AND STATUTES WHOSE INTERPRETATION IS DETERMINATIVE

The following constitutional provisions are determinative in this case:

Amendment XIV, Section 1, United States Constitution:

> . . . [N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.

Article I, Section 2, Constitution of Utah

> All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit. . . .

The following statutes are the determinative in this case:

Utah Code Ann. § 78-3a-16(f) (1987):

> Except as otherwise provided by law, the [juvenile] court has exclusive original jurisdiction in proceedings . . . to terminate the legal parent-child relationship, including termination of residual parental rights and duties as defined. . . .

STATEMENT OF THE CASE

This is an appeal of two cases which were consolidated below (R. 164). The first case (No. 86-CV-354-U) was a petition for determination of paternity filed in 1986 by Carlisle Stuart Fauver against Patti Jill Hansen (the "mother"), who is the mother of Nellie Alexandra Hansen, the appellant (R. 1). That case resulted in a stipulation between Carlisle Stuart Fauver and the mother, approved by order of the court, that Mr. Fauver was the father of the child (R. 5, 8). The stipulation and order purport to terminate the father's parental rights and duties toward the child. Copies of said stipulation and order are included in the Appendix herein, as Exhibits "A" and "B," respectively.

In 1988, the mother filed a petition to modify that order, seeking an order that the father be required to provide support for the child (R. 11).

The second case was an independent action for support (No. 88-CV-270-U) filed in 1988 by the child, through her guardian ad litem, against the father (R. 93).

Following consolidation of the cases the District Court held a hearing and subsequently rendered a memorandum decision (R. 77), dated March 17, 1989, followed by a formal Order of Dismissal (R. 80), dated April 10, 1989. The order determined that the child Nellie Hansen has no right to support from her father Carlisle Stuart Fauver. The memorandum decision and order of dismissal are included in the Appendix herein as Exhibits "C" and "D," respectively.

The child, by and through her guardian ad litem, filed this appeal on April 27, 1989 (R. 84). This court subsequently granted an order authorizing the State Department of Social Services to file a brief as amicus curiae.

STATEMENT OF THE FACTS

Nellie Alexandra Hansen was born to Patti Jill Hansen and Carlisle Stuart Fauver on July 9, 1986 (R. 5). On October 2, 1986, the father and mother filed a stipulation with the Seventh (now Eighth) Judicial District Court in and for Uintah County, State of Utah (R. 5). This stipulation was submitted with an accompanying order approving the stipulation (R. 8). The court approved the stipulation and signed the order on October 2, 1986, the same day it was filed (R. 8). The child was not a party to any of these proceedings.

The stipulation and order establish that Carlisle Stuart Fauver is the father of the child. They also purport to terminate all of the father's parental rights and obligations, including the obligation to support the child.

The mother and the child (through a guardian ad litem) subsequently filed various legal proceedings in an attempt to obtain support from the father, on the grounds that the child was in need of support from her father (R. 11, 93). The District Court denied the requested relief on the basis that the stipulation and order signed in 1986 terminated the father's obligation to support the child, and that the child was bound thereby (R. 80). This appeal followed.

SUMMARY OF ARGUMENTS

The agreement between the mother and the father, and the order approving it, purporting to terminate the father's obligation to support his child, are void on the grounds that a parent's duty to support his minor child cannot be alienated by any action of the parents. The Utah Supreme Court has held on several occasions that a parent may not bargain away the obligation of support. The Court has further held that the right to support is the child's right, and not the right of the custodial parent. Since the child was not a party to the stipulation, she is not bound by it, and may pursue, through her guardian ad litem, her own support claim.

The stipulation and the district court's order pursuant thereto are also void because their effect was to terminate the father's parental rights and duties with respect to the child. Utah's statutes make it clear that jurisdiction to terminate parental rights rests exclusively in the juvenile court, and that correct procedure must be followed. The district court lacked jurisdiction over the matter of parental rights termination and failed to follow the appropriate procedure.

Finally, for the court to give effect to the stipulation and order would work a denial of the child's right to Equal Protection under Amendment 14, Section 1 of the United States Constitution and Article I, Sections 2 and 24 of the Constitution of the State of Utah. Utah law provides that an illegitimate child has no less right to support than a child born in a marriage. Given that a child support order entered incident

to a divorce is always modifiable upon a showing of changed circumstances, it would be harsh and inequitable to hold the appellant child to the terms of an agreement to which she was not a party, simply because she was born out of wedlock.

ARGUMENT

POINT I
THE FATHER HAS AN OBLIGATION TO SUPPORT HIS DAUGHTER AND SHE HAS A CAUSE OF ACTION AGAINST HIM FOR HER SUPPORT. HIS AGREEMENT TO THE CONTRARY AND THE ORDER APPROVING IT SHOULD BE DECLARED VOID AS AGAINST UTAH LAW AND AGAINST PUBLIC POLICY

The Utah Code expresses the duty of a parent to provide for his offspring in unequivocal language: "Every man shall support his child. . . ." Utah Code Ann. § 78-45-3 (1987). Utah statutes contain other references to the parental support duty as well. The Uniform Civil Liability for Support Act provides in § 78-45-4.2 that "Nothing contained herein shall act to relieve the natural parent or adoptive parent of the primary obligation of support. . . ." (emphasis added). Another statute sets forth the policy underlying the Public Support of Children Act: "It is declared to be the public policy of this state that this chapter be liberally construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving or avoiding, at least in part, the burden often borne by the general citizenry through welfare programs." § 62A-11-302, Utah Code Annotated (Supp. 1988). Since the statutes are so explicit, the conclusion is inescapable that the duty to support one's children is a necessary concomitant of parenthood.

As the Utah Supreme Court has written, "the duty of parents to support their children derives from natural law. This has been recognized from the earliest times as a proposition of such incontestable correctness that it is neither subject to doubt nor in need of explanatory justification; and this is equally true of the corresponding right of a child to receive support from his father." State Div. of Family Services v. Clark, 554 P.2d 1310, 1311 (1976). The Court in Clark characterized the duty of support as "continuing and inalienable." Id.

The child support obligation persists even when the parents have taken steps to eliminate it. In Gulley v. Gulley, 570 P.2d 127 (Utah 1977), the Court considered the case of a divorced couple who had entered into a contract providing that the father would be released from his financial obligations under the divorce decree upon his payment of a lump sum. The Court held that while "[s]he and her husband were at liberty to bargain with respect to his obligations to her," the father could not contract out of his child support duty. The Court echoed its holding in Clark: "Every parent has the duty to support the children he has brought into the world. The duty is inalienable and he cannot rid himself of it by purporting to transfer it to someone else, by contract or otherwise." Gulley, 570 P.2d at 128-9.

A similar holding was reached in Baggs v. Anderson, 528 P.2d 141 (Utah 1974). There, the Court noted that an agreement by the parents removing the father's support duty had no effect

on the rights of the child to support from his parents: "[A father] cannot divest himself of that obligation, nor defeat the child's right to support." Id. at 143. In Hills v. Hills, 638 P.2d 516, 517 (1981), a later case also involving an attempt by stipulation to renounce the father's duty of child support, the Court wrote, "[t]here is no merit to the contention that the parents' stipulation effectively terminated the father's parental obligations. The right to support from the parents belongs to the minor children and is not subject to being bartered away, extinguished, estopped, or in any way defeated by the agreement or conduct of the parents" (citations omitted). See also, Race v. Race, 740 P.2d 253 (Utah 1987) (holding that a child's right to support is his own), and Hansen v. Gossett, 590 P.2d 1258 (Utah 1979) (holding that the right to support is the right of the children themselves).

It is manifest from the Court's holdings that a father cannot relieve himself of his obligation of child support by agreement with the child's mother. In addition to the fact that the duty is not subject to repudiation, it is elementary law that an agreement between two parties cannot rescind a third party's rights. In Gulley, 570 P.2d at 129, the Court wrote that "the minor children who are the beneficiaries of this duty were not parties to the agreement and they could not be bound thereby."

(In its memorandum decision, at R. 78-79, the district court expressed a concern that recognizing that children have an independent right to support from their parents would mean that guardians ad litem would have to be appointed for the children in

every divorce and paternity case. The Department respectfully submits that even if such were the consequence, children do have such an independent right in this State, as demonstrated herein, and the district court failed to follow the law in making its ruling. But the Department further submits that the district court's concerns on this point are unwarranted, because parents in every divorce and paternity case do not try to terminate the father's child support obligation, as happened in this case. It is relatively uncommon for parents to attempt such a thing. Thus it would be similarly uncommon that a guardian ad litem would have to be appointed to represent the interests of the children involved.)

The Wisconsin Supreme Court, in Gerhardt v. Estate of Moore, 441 N.W.2d 734 (1989), found constitutional problems with a state statute that permitted unmarried parents to relieve themselves of their support obligations by contract. See Point III of Argument, infra. But aside from constitutional concerns, the court found a practical reason to refuse to give effect to the parents' agreement. As the court noted, "denying nonmarital children the ability to obtain additional child support from their fathers regardless of future circumstances could itself result in an increased burden on the state welfare system." Id. at 739.

The Gerhardt court's reasoning is directly applicable in this case. It is unjust to shift the burden of providing support for minor children to third parties, including the State. Both the legislature and the courts have expressed intent that

the primary obligation of child support belongs to parents. In the instant case, the father is attempting to rely on an agreement exactly of the sort held invalid on numerous occasions by the Utah Supreme Court--an agreement to which the child was not a party.

It should make no difference that the father and mother submitted their stipulation to the court and obtained approval thereof. As is explained in Point II of the Argument, infra, the district court lacked jurisdiction to terminate the father's parental rights. Even if the parties had been before the proper court for such a purpose, they failed to follow the proper procedures for terminating parental rights. There is no legal basis for the court to approve the type of settlement that occurred in this case. Section 78-45a-13, Utah Code Annotated (1987), which deals with settlement agreements in paternity cases, says that "An agreement of settlement with the alleged father is binding only when approved by the court." This section is found in the very statute which provides for the establishment of paternity and the establishment of the support obligations of the father of an illegitimate child. The Legislature surely could not have intended that this section ever be used to justify the entry of an order terminating the parental obligations of a father who has just been (in the same order!) judicially determined to be the father of a child born out of wedlock.

For the reasons given above, the stipulation and order should be held void. It was error for the lower court to hold that child may not maintain her own cause of action. The

district court erred in giving effect to the stipulation and order.

POINT II

THE DISTRICT COURT LACKED JURISDICTION TO TERMINATE THE FATHER'S PARENTAL RIGHTS AND DUTIES.

As defined in Utah Code Ann. § 78-3a-2(21) (1987), termination of parental rights "means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order." Residual rights and duties are those remaining with the parent after legal custody "has vested in another person or agency, including, but not limited to, the responsibility for support, the right to consent to adoption, the right to determine the child's religious affiliation, and the right to reasonable visitation unless restricted by the court. . . . ." Utah Code Ann. § 78-3a-2(18), emphasis added.

It is clear that the 1986 court order in this case was intended to terminate the parental rights and obligations of the father. For example, the order includes the following provision in paragraph 8: "Petitioner hereby forever waives and disclaims any right accruing under the parent-child relationship between him and [his] minor child." (R. 9). The order further provides that the father "shall not be held legally or financially responsible for the minor child, and respondent [Patti Jill Hansen] waives all future child support payments or any other form of support from petitioner." Id. at paragraph 6. In addition, the father specifically waived all future claims to

custody and visitation, and agreed that any petition for the adoption of the child could be granted without his participation, and without any notice to him. Id. at paragraphs 2, 4, and 9. Finally, the first paragraph of the order also indicates that the father had signed in open court a "Consent to Termination of Parental Rights." (R. 9) That Consent is found on page 3 of the record.

Utah law provides that the Utah Juvenile Court "has exclusive, original jurisdiction in proceedings: . . . (f) to terminate the legal parent-child relationship, including termination of residual parental rights and duties as defined." Utah Code Ann. § 78-3a-16 (1987). At § 78-3a-48 (2), the statute specifies that "[a] termination of parental rights may be ordered only after a hearing is held specifically on the question of terminating the rights of the parent or parents." Even in a case where a parent voluntarily requests termination, the juvenile court must still make a finding that termination is in the best interests of both the parent and the child. Utah Code Ann. § 78-3a-48(5)

In J.C.O. v. Anderson, 734 P.2d 458 (1987), a Utah district court had acquired jurisdiction in an adoption proceeding filed by the foster parents of two minor children. While that adoption proceeding was pending, the State filed a separate proceeding in juvenile court to terminate the parental rights of the natural parents, who had abandoned the children. The juvenile court terminated the natural parents' parental rights, and they then appealed, claiming the juvenile court

lacked jurisdiction to do so. The Utah Supreme Court held that although the district court had jurisdiction over the adoption petition, only the juvenile court had jurisdiction in the matter of termination of the natural parents' rights.

The case of Hills v. Hills, 638 P.2d 516 (Utah 1981), is directly applicable to the instant proceeding. Hills involved a divorced mother and father who executed in district court prior to their divorce a stipulation according to which the father relinquished all rights to the parties' children. No provision was made for child support. The Utah Supreme Court held that the children's right to support could not be defeated by the conduct of the parents, and that the stipulation had no effect. The Court further held that "[i]f parental rights and obligations are to be terminated, this must be done by court decree in the manner prescribed by law." After noting the Utah Code's requirement that specific procedures must be followed, the Court wrote that "the drastic remedy of termination of parental duties cannot be validly decreed--with or without stipulation--without a hearing devoted to this question and including the submission of evidence and careful judicial consideration of all of the interests involved, including the child's." Id. at 517, emphasis in original.

These authorities show that the district court exceeded its authority by entering the order, the effect of which was to terminate the father's rights and duties. Since the district court lacked jurisdiction and failed to follow correct procedure in any event, the stipulation and order are void.

POINT III

UPHOLDING THE ORDER AND STIPULATION WOULD DISCRIMINATE AGAINST THE CHILD ON THE BASIS OF HER ILLEGITIMACY AND DENY HER THE RIGHT TO EQUAL PROTECTION.

If the Plaintiff had been born to married parents who later divorced, there is no doubt that any child support order contained in her parents' divorce decree could be modified as reasonable and necessary under the parties' circumstances. Under Utah Code Ann. §30-3-5, the court granting the divorce retains continuing jurisdiction over matters of child support. In Despain v. Despain, 610 P.2d 1303, 1305 (1980), the Court noted that "[u]nder Utah law, a divorce court sits as a court in equity so far as child custody, support payments, and the like are concerned. It likewise retains continuing jurisdiction over the parties, and power to make equitable redistribution or other modification of the original decree as equity might dictate."

The court's power to modify child support obligations persists even when no child support is awarded in the original decree. In Woodward v. Woodward, 709 P.2d 393 (1985), the Utah Supreme Court maintained that "[t]he fact that one parent is not currently required to pay support to the other neither terminates the child's right nor obviates the parent's responsibility for such support as may be determined at some future time." Id. at 394, citations omitted.

In light of the protection that children born in wedlock enjoy with regard to the assurance of parental support, it seems unjustly discriminatory to foreclose the appellant child's right to support because of her parents' earlier

agreement. By upholding the agreement, the district court withheld from her a source of support to which she would have been entitled if she had been born in a marriage--in effect, punishing the child for the fact that her parents were not married.

It is noteworthy that Utah's statutes make it clear that the child support obligation is not diminished by the fact that a child was born out of wedlock. Section 78-45a-1 states that "[t]he father of a child which is or may be born out of wedlock is liable to the same extent as the father of a child born in wedlock . . . for the education, necessary support and funeral expenses of the child. . . ." (emphasis added) The District Court's action was contrary to notions of equal protection as codified in the pertinent Utah statutes.

The District Court's action is also contrary to Article I, § 2 of the Utah State Constitution and Amendment 14, § 1 of the United States Constitution. The Utah provision states: "All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit . . . ." By the terms of the Federal Constitution, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

The Wisconsin Supreme Court, in a case remanded from the U.S. Supreme Court for further consideration in light of Clark v. Jeter, 486 U.S.--, 108 S. Ct. 1910, 100 L. Ed. 2d 465 (1988), recently addressed the equal protection issues raised by the practice of upholding agreements in which an unmarried father

attempts to divest himself of his child support obligations by agreement with the mother. Gerhardt v. Estate of Moore, 441 N.W.2d 734 (1989). While that court dealt with (and ultimately invalidated) a statutory scheme that allowed such agreements, the court's reasoning was applicable to the instant case. The Wisconsin court held that it is unfair, as well as unconstitutional, for nonmarital (but not marital) children to be barred from seeking increases in support amounts, regardless of their need: "Upholding this inability to seek additional support from their fathers would deprive [plaintiff] and certain other nonmarital children of something which marital children have always had, . . . namely the right to seek support from both their parents during the whole of their minority." Id. at 738.

In the case at hand, it was inconsistent with the principles of equal protection for the district court to have upheld the agreement between the child's mother and father. The lower court erred in maintaining that the child may not obtain support from her father, even if it means modifying the 1986 order which absolved him of any child support obligations. To hold otherwise would be tantamount to an acceptance of the proposition that children born to unwed parents are not entitled to the same economic protections marital children enjoy--a proposition clearly contrary to existing law and the principles of equal protection.

CONCLUSION

The Department respectfully requests that this Court reverse the order of the district court, hold that the stipulation and order terminating the father's support obligation are void as a matter of law, hold that the child has an independent cause of action for support from her father, and remand the matter to the district court for a determination of an appropriate support obligation for the father towards the appellant child.

DATED this 31st day of August, 1989.

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Attorney General

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BLAINE R. FERGUSON
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CERTIFICATE OF SERVICE

I certify that on this 31st day of August, 1989, I mailed four copies of this Brief to each of the following persons at the following addresses, postage prepaid:

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IN THE SEVENTH JUDICIAL DISTRICT COURT OF UINTAH COUNTY

STATE OF UTAH

CARLISLE STUART FAUVER, :

Petitioner, : STIPULATION

vs. :

PATTI JILL HANSEN, : Civil No. 86CV354-U

Respondent. :

Carlisle Stuart Fauver, the petitioner, and Patti Jill Hansen, the respondent, having duly considered what is in the best interests of Nellie Alexandra Hansen, the minor child of the parties, and desiring to create a healthy environment in which the minor child can grow, hereby stipulate and agree as follows:

1. Carlisle Stuart Fauver and Patti Jill Hansen are the natural parents of the minor child, Nellie Alexandra Hansen (hereafter referred to as "Alex", born July 9, 1986).

2. Permanent custody of the child shall be granted to the respondent. Petitioner agrees that any claims to custody by him or anyone claiming through him are forever waived.

3. The petitioner forfeits all legal rights to the child, and makes no claims as parent for any purpose included but not limited to an income tax deduction.

4. The petitioner agrees to make no demands to spend time with the child. The parties agree this does not forbid interaction between father and daughter, but any such interaction requires complete approval from the mother.

5. In the event of the death of respondent, custody of the child shall be transferred to the party designated by respondent, or to the maternal grandparents if no designation has been made. Petitioner waives any right to challenge said transfer of custody.

6. The petitioner shall not be held legally or financially responsible for the minor child and the respondent agrees to waive all future child support payments or any other form of support from petitioner.

7. The petitioner agrees that contemporeanously with this Stipulation, he will execute in open Court a consent to adoption and waiver of parental rights. Said consent will provide that petitioner will not object to the adoption of said minor child and that the respondent has no obligation to inform petitioner of said adoption.

8. At his discretion, petitioner may establish a financial arrangement he feels is appropriate to insure some measure of future financial security for the minor child.

9. Any and all obligations between petitioner and respondent that may have arisen as a result of the birth of the minor child that have not been resolved by this agreement shall be terminated.

DATED this 13 day of September, 1986.

Carlisle Stuart Fauver
CARLISLE STUART FAUVER

Patti Jill Hansen
PATTI JILL HANSEN

STATE OF UTAH)
ss:
County of Salt Lake)

SUBSCRIBED TO AND SWORN before me this 13 day of September, 1986.

Russell F. Gardner
NOTARY PUBLIC
Residing at: [illegible]

My commission expires:
2-7-87

2/21/87

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IN THE SEVENTH JUDICIAL DISTRICT COURT OF UINTAH COUNTY

STATE OF UTAH

CARLISLE STUART FAUVER, :

Petitioner, : O R D E R

vs. :

PATTI JILL HANSEN, : Civil No. 86CV354-4

Defendant. :

The above entitled action came on regularly for hearing this 2d day of October, 1986, before the Honorable Richard C. Davidson. Petitioner appeared in person and was represented by counsel, L. A. Dever. Defendant did not appear in person or through counsel. A Stipulation entered into between the parties was presented to the Court. The Court having approved said stipulation and having heard testimony of petitioner, and petitioner having signed in open Court a Consent to Termination of Parental Rights, and being fully advised in the premises;

IT IS HEREBY ORDERED:

1. Carlisle Stuart Fauver and Patti Jill Hansen are the natural parents of the minor child, Nellie Alexandra Hansen, born July 9, 1986.

2. Permanent custody of said minor child is hereby awarded to Patti Jill Hansen. Any claims to custody by petitioner or anyone claiming through him are forever waived.

3. Petitioner forfeits all legal rights to the child, and makes no claim as parent for any purpose including, but not limited to, an income tax deduction.

4. Petitioner is ordered to make no demands to spend time with the child. Any interaction between father and daughter must be upon the complete approval of defendant.

5. In the event of the death of respondent, custody of the child is ordered to be transferred to the party designated by respondent, or to the maternal grandparents if no designation has been made. Petitioner waives any right to challenge said transfer of custody.

6. Petitioner shall not be held legally or financially responsible for the minor child and the respondent waives all future child support payments or any other form of support from petitioner.

7. Petitioner may, at his discretion, establish a financial arrangement he feels is appropriate to insure some measure of future financial security for the minor child.

8. Petitioner hereby forever waives and disclaims any right accuring under the parent-child relationship between him and said minor child.

9. Petitioner hereby waives any notice or service upon him of any petition for adoption involving Nellie Alexandra Hansen and said adoption may be granted without his participation.

10. Any and all obligations between petitioner and respondent that may have arisen as a result of the birth of the minor child that have not been resolved are hereby terminated.

DATED this 02 day of October, 1986.

BY THE COURT:

Richard C. Davidson

RICHARD C. DAVIDSON
District Court Judge

IN THE EIGHTH JUDICIAL DISTRICT COURT OF UINTAH COUNTY

STATE OF UTAH

CARLISLE STUART FAUVER, Plaintiff,	)	MEMORANDUM DECISION
vs.	)	
PATTI JILL HANSEN, Defendant.	)	Civil No. 86-CV-354U

This matter is before the court for consideration of the claim of Nellie Alexandra Hansen (herein "the child") for support against her father, Carlisle Stuart Fauver (herein "Fauver"). In 1986, Fauver filed a paternity action to determine his rights and responsibilities regarding the child and her mother, Patti Jill Hansen (herein "Hansen"). In that action, Fauver and Hansen entered into a stipulation in which Fauver gave up any rights regarding the child, and Hansen "waived all future child support payments or any other form of support from petitioner" (Fauver). Stipulation, page 2, paragraph 6. A court order was entered in accordance with the terms of the stipulation.

On November 21, 1988, the child through her guardian ad litem, filed an independent action for support, claiming that she was not bound by the terms of the stipulation and order because she was not a party to the previous action. On December 5, 1988, Hansen filed a petition to modify the order

originally entered, claiming a substantial change of circumstances. The two actions were then consolidated for determination of the issues.

Prior to consolidation, the child filed a Motion for Temporar Support, and after consolidation, filed a Motion for Summary Judgment. Fauver responded with a Motion to Dismiss for falure to state a cause of action. Oral arguments on the pending motions were heard on March 7, 1989.

Hansen and the child ask the court to declare that the stipulation is void as against public policy, and/or that the child may maintain the independent cause of action. Fauver alleges that the stipulation and order are binding upon Hansen and the child, and that there has been no change of circumstance to warrant any amendment to the order.

Having carefully considered the pleadings, memoranda and oral arguments, the court rules as follows:

(1) The stipulation and the order based thereon entered into between Fauver and Hansen are not void as against public policy. If the agreement and order provided, or the subsequent facts indicated that the child was left without any support, the agreement could perhaps be voided. However, the agreement provides that Hansen will have exclusive custody of the child. Thus, Hansen assumed the responsibility for the care as well as the custody of the child.

(2) The child may not maintain a separate cause of action for support. To allow such actions after one of the

natural parents had entered into an agreement for, or had been awarded an order of support for the benefit of the child, has the potential of creating chaos in the area of domestic relations law. At the very least, each paternity action, or divorce action involving children would require the appointment of the parent or another as guardian ad litem to insure that such actions would not arise years after all other litigation was completed. For this reason, the court rules as stated above.

(3) If Hansen is to have any cause of action for child support, she must at least, show a significant change of circumstances. However, the court is not convinced that the order herein based upon this particular stipulation is subject to modification. Counsel is invited to submit memoranda on that point. If the court finds it is subject to modification, an evidentiary hearing will be held on that point.

(4) Based on the foregoing rulings, the motion for summary judgment is denied, the motion for temporary support is denied, and the motion for dismissal is denied without prejudice.

DATED this 17th day of March, 1989.

BY THE COURT:

Dennis L. Cleary

cc: Harry H. Souvall
Ron Nehring

IN THE EIGHTH JUDICIAL DISTRICT COURT IN AND FOR

STATE OF UTAH UINTAH COUNTY

CARLISLE STUART FAUVER, Plaintiff, vs. PATTI JILL HANSEN, Defendant,	:	ORDER OF DISMISSAL Civil No. 86-CV-354 U

NELLIE ALEXANDRA HANSEN, by and through her Guardian Ad Litem, Nancy Olsen, Maternal Aunt, Plaintiff, vs. CARLISLE STUART FAUVER, Defendant.	:	ORDER OF DISMISSAL Civil No. 88-CV-270-U

THE ABOVE CAPTIONED MATTER having come before the Court on March 7, 1989 for oral arguments and hearing on the motion of Carlisle Stuart Fauver to dismiss the complaint of Nellie Alexandra Hansen for failure to state a cause of action, the Hon. Dennis Draney, Judge presiding, Carlisle Stuart Fauver being represented by his counsel, Harry H. Souvall and the minor child Nellie Alexandra Hansen by and through her guardian ad litem being represented by Ron Neerings, the Court having reviewed the file and the pleadings therein, having heard the arguments and representations of respective counsel, the Court having

taken the matter under advisement and having issued a memorandum decision, based thereon and for good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the complaint of the minor child, Nellie Alexandra Hansen, as against Carlisle Stuart Fauver should be and hereby is dismissed as no cause of action, the Court finding and determining that the child may not maintain a separate cause of action for support from her natural father when there has previously been a resolution of the child support obligation between the parents; further,

IT IS HEREBY ORDERED that as to the minor child Nellie Alexandra Hansen the stipulation and agreement by which Patti Jill Hansen gave up any claim of child support against Carlisle Stuart Fauver is not void as against public policy; further,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this order of dismissal shall constitute a final judgment as it resolves all pending issues between Nellie Alexandra Hansen,

her guardian ad litem and Carlisle Stuart Fauver, and this Court finds and determines that this order of is an appealable order.

DATED this 10th day of April, 1989.

BY THE COURT:

/S/

DENNIS L. DRANEY
JUDGE

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed a true and correct copy of the foregoing ORDER OF DISMISSAL to:

HARRY H. SOUVALL
McRAE & DELAND
Attorneys for Fauver
209 East 100 North
Vernal, Utah 84078

on the ~~29th~~ 30th day of March, 1989, postage prepaid in the United States Postal Service.

BRIAN M. BARNARD
Attorney for Minor Child